



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

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DEC 02 1994

ENFORCEMENT CONFIDENTIAL
FOIA EXEMPT - DO NOT RELEASE

Reply To
Attn Of: HW-104

FOIA EXEMPT

Dave Jansen
Southwest Region Section Supervisor
Toxics Cleanup Program
Department of Ecology
State of Washington
P.O. Box 47775
Olympia, Washington 98504-7775



Re: Ridgefield Brick and Tile site, Ridgefield, Washington
EPA Id. No. WAD 00903 6906
RCRA Docket No. 1085-09-26-3008P

Dear Mr. Jansen:

The United States Environmental Protection Agency, Region 10 ("EPA") has received your letter to Randall Smith, dated September 19, 1994, regarding the above-referenced site. Our staff has discussed your letter, this site, and Ecology's Toxic Cleanup Program's willingness to conduct the necessary stabilization work under the Model Toxics Control Act ("MTCA") at the Ridgefield Brick and Tile ("RBT") site, using the RBT Post-Closure Trust Fund to reimburse Ecology for its costs.

EPA agrees that the RBT site owner, Pacific Wood Treating ("PWT") will not be able to continue to perform the necessary post-closure and stabilization activities at the RBT site, due to PWT's Chapter 7 bankruptcy. As such, EPA agrees that Ecology's Toxic Cleanup Program is in the best position to conduct the necessary work at the RBT site at this time. In addition, EPA agrees with Ecology that such stabilization work should be conducted in the near future, with the Toxic Cleanup Program being reimbursed for its expenditures at the RBT site out of the RBT Post-Closure Trust Fund. EPA also understands that once the trust fund assets are exhausted, Ecology will prioritize the site and that any further work will be dependent upon the risk posed by the site to human health or the environment and the prioritization of available agency resources.


Since there is no current viable owner or operator of the RBT site, and since the former owner/operator, PWT, has declared bankruptcy, any future actions by EPA at the RBT site would most

likely be conducted under CERCLA authority rather than RCRA authority. In this case, EPA would not view MTCA response actions to stabilize the RBT site and reduce risk to human health and the environment as being subject to RCRA permitting, closure or post-closure requirements. These remain the obligation of the facility owner/operator. In addition, regarding any potential CERCLA liability Ecology might incur at the RBT site, Section 107(d)(2) of CERCLA, 42 U.S.C. § 9607(d)(2), provides the following:

"(2) State and Local Governments -- No state or local government shall be liable under this subchapter for costs or damages as a result of actions taken in response to an emergency created by the release or threatened release of a hazardous substance generated by or from a facility owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or local government. For the purpose of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence."

I hope this letter fulfills the needs identified in your September 19, 1994 letter. Should you or your staff have any questions or concerns, please contact me at 553-0695.

Sincerely,



Betty Wiese, Acting Chief
Waste Management Branch
Hazardous Waste Division

cc: Carol Kraege, Ecology
Tom Cook, Ecology
Bob Warren, Ecology
Betty Wiese, EPA
Marcia Bailey, EPA
Sylvia Burges, EPA
Dean Ingemansen, EPA